
(1991) 11 AHC CK 0051

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 33560 of 1991

Asha Ram Singh and another

APPELLANT

Vs

Board of Revenue, U.P. and others

RESPONDENT

Date of Decision : 26-11-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9

Constitution of India, 1950 — Article 226

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 3(2), 3(3B), 3(4C), 3(5), 4

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 132, 143(2)

Citation : AIR 1992 All 229 : (1992) 1 AWC 173 : (1992) RD 67

Hon'ble Judges : S.R. Singh, J

Bench : Single Bench

Advocate : B.B. Paul, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

1. Present petition under Article 226 of the Constitution of India seeks quashing of the impugned orders and judgments dated 5-12-1983, 24-9-1984 and 18-9-1991 passed by respondents 3, 2 and 1 respectively thereby concurrently dismissing the petitioners' suit u/s 229B of the U.P. Act No. 1 of 1951.

2. Facts of the case are that the suit filed by the petitioners has been concurrently held to be barred by Section 49 of U.P.C.H. Act by all the three courts below. The learned counsel for the petitioners contends that since the plot in dispute was not included in the scheme for the purposes of allotment of Chaks, the petitioners could not have filed any objection u/s 9 of the U.P.C.H. Act and therefore, Section 49 of the Act does not come into play. The argument of the learned counsel for the petitioners is totally misconceived. The only effect for the plot being kept out of the scheme is that it is not subjected to proceedings for allotment of chaks. So far as the question of title is concerned, that is to be necessarily gone into under the provisions of the Act.

3. The term "consolidation" as defined in Section 3(2) of the U.P.C.H. Act 1953 means re-arrangement of holding in a Unit amongst several tenure holders in such a way as to make their respective holding more compact. The explanation added to this clause provides that for purposes of this clause, holding shall not include the followings.

- (i) land which was grove in the Agricultural year immediately preceding the year in which the notification under Section 4 was issued;
- (ii) land subject to fluvial action and intensive soil erosion;
- (iii) land mentioned in Section 132 of the U. P. Zamindari Abolition and Land Reforms Act, 1950;
- (iv) such compact areas as are normally subject to prolonged waterlogging;
- (v) Usar, Kallar and rihala plots forming a compact area including cultivated land within such area;
- (vi) land in use for growing pan, rose, bela jasmine and kewra; and
- (vii) such other areas as the Director of Consolidation may declare to be unsuitable for the purpose of consolidation;

4. "Consolidation Area" as defined in Section 3(2A) means the area, in respect of which a notification u/s 4, has been issued, except such portions thereof to which the provisions of the U.P. Zamindari Abolition and Land Reforms Act, 1950, do not apply, "Consolidation Scheme" according to Section 3(3B) means the scheme of consolidation in a Unit. Section 3(4C) defines "holding" as parcel or parcels of land held under one tenure by a tenure-holder. Singly or jointly with other tenure-holders "land" as defined in clause (5) of Section 3 means "land" held or occupied for purposes connected with Agriculture, horticulture and animal husbandry including pisciculture and poultry farming and includes, (i) the site, being part of a holding, of a house or other similar structure, and (ii) trees, wells and other improvements existing on the plots forming the holdings. These expressions and the scheme of the Act, make it abundantly clear that the provisions of the Act are attracted in respect of the "land" falling within the "consolidation area" irrespective of the fact whether or not such land is actually included in the scheme for purposes of allotment of chaks. Sections 7 to 8 A of the Act provide for revision of village map, field book and the current annual register and thereafter preparation of statement of principles in the manner indicated therein. Section 9 of the Act provides for publication of statement of principles. The provisional consolidation scheme for a unit is prepared in the manner indicated in Section 19 of the Act. It is evident from the various provisions of the Act that plot which is included in the consolidation scheme for purposes of allotment of chaks, is given a certain exchange ratio of valuation, whereas a plot which is kept out of the scheme is not allocated any exchange ratio of valuation, but the disputes with regard to title of every plot of land situated in a consolidation area, have to be resolved in the manner indicated in

Sections 9 and 9A of the Act read with related rules. In the instant case, the plot in dispute was not included in the scheme for purposes of allotment of chaks but that does not mean that the petitioners were absolved of the necessity to get their title if any, adjudicated upon under the provisions of the Act. That having not been done, in the instant case, the Revenue Courts have committed no error in invoking the provisions of Section 49 of the Act which puts a complete bar to the jurisdiction of Civil or Revenue courts in respect of the declaration/adjudication of rights of tenure holders pertaining to land lying in an area for which a notification has been issued under sub-section (2) of Section 4 or adjudication of any other rights arising out of consolidation proceedings and in regard to which proceeding could or ought to have taken under the Act.

5. The learned counsel for the petitioner cited before me a decision of this Court in *Kamla Shanker v. Deputy Director of Consolidation* 1979 Rev Dec 78 in support of his contention that the petitioners' suit was not barred by Section 49 of the Act. That was a case where the petitioners were recorded in the basic year as Bhumidar and objection was filed by one of the respondents in the said case on the allegation that the plot was Abadi on the spot, and therefore, it was prayed by the said respondent that the names of recorded tenure holders be expunged. The Consolidation Officer found that on the spot the plot was in the nature of Abadi and he further came to the conclusion that Abadi on the plot was in existence even from before the date of vesting and accordingly, the Consolidation Officer held in that case that the plot involved in the said case did not fall within the definition of "land" and accordingly, it was ordered to be recorded as "Abadi" after expunging the names "of the recorded tenure holders. This order was upheld by the Settlement Officer, Consolidation, in appeal and further in revision by the Deputy Director Consolidation. The High Court held in that case relying upon a decision of the Division Bench of this Court in *Triloki Nath v. Ram Gopal* reported in 1974 Rev Dec 5, that the consolidation authorities had no jurisdiction to direct the names of the petitioners to be expunged from the revenue papers. It was in this context that the court further held that when the Consolidation Authorities allowed the entry to continue on the ground that they had no jurisdiction to decide the question of title, it cannot be said by any stretch of imagination that any decision has been reached by the Consolidation Authorities in regard to the title. Accordingly, it was on this basis that this Court held that bar of Section 49 of the Act could not be pressed into service. The present is not a case where the petitioners were recorded as tenure holders and the Consolidation Authorities had allowed the entry to continue on the ground that they had no jurisdiction to decide the question of title. The title that the petitioners are now claiming by means of suit u/s 229B of the U.P.Z.A. and L.R. Act, could well have been claimed in the proceedings u/s 9 of the U.P.C.H. Act and having failed to do so, they cannot invoke the assistance of Civil or Revenue Courts, in view of the ban created by Section 49 of the U.P.C.H. Act, to get adjudication or declaration of their rights in respect of the land in dispute.

6. The learned counsel for the petitioner, then cited before me another decision

of this court in Phunnan Singh alias Kamla Singh v. Panchu Harijan reported in 1986 Rev Dec 20. It was a decision rendered in second appeal arising out of a civil suit for injunction. This Court held that on the finding recorded by the lower courts to the effect that the suit land was Abadi, the Consolidation Authorities had no jurisdiction to determine the rights of the parties in respect thereto. This decision has no application to the facts of the present case inasmuch as the petitioners in the instant case claim to be Bhumidhars and wanted a declaration in that regard. The land in dispute was admittedly recorded as "NAVIN PARTI" -- property belonging to the Gaon Sabha. The petitioners were not claiming themselves to be the owners of any Abadi land, nor was it their case that the land in dispute was their Abadi before the commencement of the Consolidation proceedings in the area. The case set up by the petitioners was that the plot in dispute is a part of their old Bhumidhari plot No. 268 and that though the plot was not included in the Consolidation Scheme, but it was wrongly recorded in the revenue records from the year during the consolidation proceedings as "Navin Parti". Since the petitioners are claiming Bhumidhari interest in the plots in dispute, the present suit was rightly held to be barred by Section 49 of the Act.

7. The learned counsel for the petitioner has also placed reliance upon a decision of this court reported in Harihar Prasad v. Brij Bahadur Singh 1989 RD 258. The said decision has no application to the facts of the present case, inasmuch as that was a case where declaration was sought to the effect that the disputed land was abadi land and it was held that such declaration could be granted by Sub-Divisional Officer u/s 143(2) of the U.P.Z.A. & L.R. Act and not by the Civil Courts. The learned counsel then cited before me another decision of this Court in Ram Pal v. Champat Singh reported in 1985 RD 153 : 1982 ALJ 1424. This decision too is of no avail to the petitioners inasmuch as it was a claim in respect of easementary rights in respect of "Banjar" land and it was due to this reason that this Hon"ble Court held that the Consolidation Authorities had no jurisdiction to adjudicate upon the rights of the parties and therefore due to this reason, the suit was held to be not barred by Section 49 of the U.P.C.H. Act.

8. The learned counsel for the petitioners, then contended before me that entries made in the revenue records are not conclusive in view of Section 27(2) of the U.P.C.H. Act which provides that all entries in the revenue records of rights prepared in accordance with the provisions of sub-section (1) shall be presumed to be true until the contrary is proved.

9. Having heard the learned counsel for the petitioners, I do not feel persuaded to hold -that present was a case where they could claim benefit of Section 27 of the U.P.C.H. Act so . as to successfully evade the bar of Section 49 of the Act. The facts as stated in the plaint, summary of which has been set out hereinbefore, do not entitle the petitioners to claim benefit of Section 27(2) of the Act. The facts pleaded by the petitioners in the plaint do not suggest that the entries in the revenue records prepared under the provisions of the U.P.C.H. Act were either vitiated by fraud/ misrepresentation or that the entries were made in

the record contrary to any orders passed by the Consolidation Authorities. The petitioners were admittedly not recorded as tenure holders in the basic Khatuni and it was incumbent upon them to have filed objection u/s 9(2) of the U.P.C.H. Act, claiming right, title or interest in the land in dispute on publication of the statement of principles. Having failed to do so, they cannot be permitted to claim any such right which they could or ought to have claimed under the provisions of the U.P.C.H. Act in view of the specific bar created by Section 49. The second contention too of the counsel for the petitioners, has no merits. Cases of fraud, misrepresentation or error of the type mentioned above, the entries have to be taken as final. Section 27(2) does not in any way affect the bar created by Section 49 to the jurisdiction of Civil or Revenue courts to entertain suit or proceedings which correctness of an entry prepared in accordance with the Act is challenged.

10. No other submissions have been pressed before me by the learned counsel for the petitioners.

In the result, the petition fails and is accordingly dismissed in limine.

11. Petition dismissed.